United States Court of Appeals for the Second Circuit



APPENDIX

75-7032

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT Docket No. 75-7032

BEACON CONSTRUCTION COMPANY, INC.,

Plaintiff-Appellee

v.

MATCO ELECTRIC COMPANY, INC., d/b/a DWYER ELECTRIC CO., INC.,

Defendant-Appellant

APPEAL FROM A JUDGMENT ENTERED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

APPENDIX



BECKER, CARD, LEVY & RICHARDS, P.C.
ATTORNEYS AT LAW
141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760

TELEPHO! 607) 754 0106

Attorneys for Defendant-Appellant

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costs7
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- 1. The plaintiff is a corporation organized under the laws of the state of Massachusetts with its principal place of business in Massachusetts and the defendant is a corporation organized under the laws of the state of New York with its principal place of business in New York. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.
- 2. Under date of September 20, 1972, the plaintiff entered into a written contract with the defendant, a copy of which is appended hereto as Exhibit A whereby the defendant undertook to provide the complete interior electrical and exterior electrical systems required in the construction of Paul Place Housing for the Elderly Residential Project Elderly Site 6 Pinnacle View Apartments.
 - 3. Paragraph 14 of the terms and conditions of said contract provides, in part:
 - "... The Subcontractor hereby agrees that no mechanic's or other lien, notice of contract or other claims or charges shall be filed or maintained by it against the said buildings and improvements and real estate appurtenant thereto, or any part thereof, for or on account of any work or labor done or materials furnished under this Subcontract or otherwise, for, toward,

in or about the erection and constructions of said buildings and improvements and that the filing of any lien, notice of contract or other claim or charge shall be grounds for termination of this Subcontract under the provisions of Paragraph 9 above. The Subcontractor hereby formally and irrevocably releases and waives any and every machanic's, materialman's and any and every other lien, charge and claim of any nature whatsoever that it has or may at any time be entitled to have against the aforementioned buildings, improvements and real estate, together with its right to file any and every such lien, claim and charge"

- 4. Under cake of August 20, 1977, the defordant served upon the Democration of the New York State Urban Povelonment Corporation and upon the plaintiff, a "notice of lien on account of sublic improvement." A corp of the notice corpus upon the defendant is appended hereto as Erhibit B.
- 5. Under date of August 29, 1974, the defendant gave notice to the plaintiff of the filing of a notice of mechanic's lien in the Monroe County Clerk's office, a copy of which is appended hereto as lyhibit c.
- 6. Under date of August 30, 1974, the defendant mailed to the plaintiff a demand for a verified statement pursuant to Section 76 of the New York Lien Law, a copy of which is appended hereto as Exhibit D.

7. Plaintiff contends that the defendant is not entitled to maintain a lien or otherwise claim the benefits of the Lien Law by virtue of the written waiver of lien contained in the subcontract. 3. Plaintiff further contends that, inasmuch as defendant is not entitled to lien rights, it is not entitled to demand a verified statement under Section 76, Wherefore, plaintiff demands judgment (1) declaring that the notice under rechanic's lien law filed by the defendant with the clerk of Monroe County against the real property of Clinton Avenue Paul Place Houses, Inc., is null and void and of no force or effect, (2) vecating the defendant's request for a verified statement purcuant to paragraph 5 of section 78 of the New York Lien Law.

Roche Carons & DeGiacono One Center Plaza

(e1. (617) 742-614

AHENDED COMPLAINT

Plaintiff areads its complaint heretofore filed and served as follows:

- (a) By striking out paragraph 8 and substituting therefor the following:
- "8. On October 3, 1974, the plaintiff filed in the County of Monroe County Clerk's office a bond in the penal sum of \$351,601.82, for the purpose of dissolving the lies of the defendant.
- was \$ 3,516.00 in premiums said to the Astna Casualty and Survey Casualty and Survey Casualty and Survey Casualty and
- (b) by remitted out parametric (2) of the certail for judgment and substituting the following:

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Movero L. Tover 27
Moverth Mover Lieberran & Lieb
1400 Statler Lilton Duilding
Buffalo, New York 14202
Tol. (716) 856-6000

MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

Flaintiff roves, pursuant to Rule 26, TRCP, uson the facts entablished by the plandings and by the assexed affidavits of Parvey Strinberg and Michael T. Putzicar, that appears judgment be entared in its favor as follows: (1) declaring that the notice of cocharies lies dated August 28, 1974, filed by the defendant in the Monroe County Clerk's Office against the property of Clinton Avenue Fiel Place Towner, Inc., situated at 516 Clinton Avenue Fiel Place Towner, Inc., situated at 516 Clinton Evenue Fiel Place Towner, 20 January (1) declaring the property of Clinton Avenue Fiel Place Towner, 3, 1971, by the planting of intimate and contact and first and advantage of Clinton and County County County (1) declaring the property of Clinton and County County (1) declaring the first and the first and the first and County County County (1) declaring the first and the first and County County County (1) declaring the first and the first and the first and County County (2) pages 1975.

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executive in the rich at Thermore Theory of Paul Place to the for the Flore of the construction of Paul Place to the for the Flore of Market Place to the for the Flore of Market Place to the for the Flore of Market Place to the first of th

- 4. Wy duties as vice president include the negotiation and execution of subcontracts for the various phases of the work.
- 5. As such I negotiated and, on or about September 20, 1972, signed on behalf of the plaintiff, a subcontract with the defendant Mater Electric Company, Inc. A copy of the subcontract is annexed hereso as Indibit A.
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or objects or otherwise. For, coverd to a bout the exception and countries to the countries and improve-

formally and irrevocably releases and walves any and every mechanic's, materialmen's and any and every other lien, charge and claim of any nature whatsoever that it has or may at any time be entitled to have against the aforementioned buildings, improvements and real estate, together with its right to file any and every such lien, claim and charge"

7. Ca or about Turnet 29, 2074, the currents as the straight of the current of the straight of the current of t

the defendant on the interest of the miner. Such

of the agreement by the rolling december this according this agreement by the rolling december in this action.

10/1/25/55: 51/6: 40 LC / D J/1 WHEREFORE, it is respectfully submitted that the plaintiff's notion for summary judoment herein should be granted.

Marvey Sceinberg

Subscribed and sworm to before re at Doston, Massachusetts this 27% day of September 1974.

With re Product Corner realth

or Stabola Sin

153477 30 0313.30

Affidavit

GEFAUL T. PUTZITER, being duly sworn, deposes and save as follows:

The of the first of Technology Persons a Declinear, entrail to

o un oblical is notice for surveyor judgment.

3. On October 2 1011 on habits of the

cochanic's less by the platories as writerial and the followed surery depart as surery. A conv of the word is recorded hereto and rade part of this afridavit.

4. On the same day, I executed a stipulation for an order discharging the real property described in the defendant's Notice of Mechanic's Lien from the lien and appeared before the Honorable Austin W. Erwin, a justice of the Supreme Court of New York, who entered an order in accordance with the stipulation. A copy of the order and of the stipulation is annexed hereto.

5. Also annexed hereko are copies of the bills for the precium for said bond rendered by the Aetha Casualty and Surety Company to Collier, Cobb and Associates to the contains a contains a

. 124.74-

Subscribed and sworn to before re at Boston,

Poency Tuballe

Commonwealth of Massachusetts Commission expires

September 25, 1979.

STATE OF NEW YORK SUPREME COURT: COUNTY OF MONROE

IN THE MATTER OF THE NOTICE UNDER MECHANIC LIEN LAW

of

ORDER

MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC COMPANY INC.

against

BEACON CONSTRUCTION COMPANY INC.

By reason of the stipulation by and between the attorney's for the parties, a copy of which is samexed hereto, it is,

OBDER 10. that a cours in Notice Water Medical Law 10. A property situate as 200 Clinton Avenue South, Rochester, Water in the South and Avenue South.

\$ Austin (1) - 60001

STATE OF NEW YORK SUPREME COURT : COUNTY OF MONROE In the matter of the Notice Under Mechanic Lien Law of STIPULATION MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC COMPANY INC. against BEAGON CONSTRUCTION COMPANY INC. WHEREAS, MATCO ELECTRIC COMPANY INC. filed in the office of the Clerk of the County of Monroe , a Notice of Mechanic's Lien under the Lien Law of the State of New York relating to improvement on real property situate at 846 Clinton Avenue South, City of Rochestor, County of Mouroe and State of New York, on the 29th day of August, 1974. MATCO ELECTRIC COMPANY INC. 4/5/a DWYER ELECTRIC COMPANY INC. Decker, Cari, Laty & Richards, P.C. Eg. Frederic A. b. Tardy /Rodney Af Reenards a member of the firm Attorney for: BEACON CONSTRUCTION COMPANY INC. Roche, Carens & DeCriacomo Michael T. Putziger a member of the firm Dated this 3rd day -27of October, 1974

BOND TO DISCHARGE MECHANIC'S LIEN

THE ÆTNA CASUALTY AND SURETY COMPANY Hartford, Connecticut 06115

KNOW ALL MEN BY THESE PRESENTS, That we, BUAGON CONSTRUCTION CO., INC., P.O. Box 2051, Montello Station, Brockton, Mass. 02405

as Principal, and THE ÆTNA CASUALTY AND SURETY COMPANY, of Hartford, Connecticut, with an office and usual 1200 Sibley Tower Blag., Rochester, New York place of business at No.

as Surety, are held and firmly bound unto the Clerk of the County of Honroe

Three Hundred Fifty-one Thousand Six Hundred One & 82/100 (\$ 351,601.82) Dollars, lawful mo: If of the United States, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and a signs, jointly and severally, firmly by these presents. SIGNED and SEALED this 30th day of September .19 74 .

.1974 . MATOO HERRITIC COMPANY, INT. 6/0/2 WHOMEAS, on the 28thday of August .1974 . MATCO FIRETRIC DAYED FIRETRIC CO. FIG., 56 Corneros Drive, Rochester, New York caused to be filed in the office of the Clark of the County of Monroe One 252/100 or Claim in the sum of Two Hundred Winety-three Thousand One 252/100 293, a notice of Mechanic's Lien

(\$ 293,001.52 | Dollars, against Real Property cituate at 846 Clinton Avenue, South, Rochester, New York

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THE JETNIA CASUALTY AND SUBETY COMPANY

By W. A. Hichonom, Attorney in-Fact

To seechwell

County of sluffalk

On this 30 holds of September 1974, before me presonally appeared Harvey Steinberg

119 KTT Melocy Poblic Notacy Public

to me known, who, being by me duly sworn, did depose and say: That he resides in the City of ; that he is Attorney in-Fact of THE ÆTNA CASUALTY AND SURETY COMPANY.

the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by him and that he signed said instrument as Attorney-in-Fact by authority of the Board of Directors of said Company; and affiant did further depose and say that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882 of the Laws of the State of New York known as the Insurance Law as amended, issued to THE ÆTNA CASUALTY AND SURETY COMPANY his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guaranties, and other obligations required or permitted by law; and that such certificate has not been revoked.

Notary Public

The within instrument has been executed by the above named officer by authority of the Board of Directors parsuant to the following Standing Resolutions of the aforesaid THE ÆTNA CASUALTY AND SURETY COMPANY, which Resolutions are now in full force and effect:

VISTED Ther each of the following officers. Charman, Vica Charman, President, Any Executive Vice President. Any Senior Vice President, Any Vica Startants And Assistant Vice President. Any Secretary, Any Assistant Secretary, may from time to time as point President Vice Presidents, President Assistant president of an Assistant president of a second of a bond recognition of a bond of a second of the Board of Directors may at any time remove any such appropriate and revoke the

VOTED with any bond, resognization contract of indemnty, or who impost petroy to the nature of a thind, recognizance, or conditional codertaking shall be valid and a specific programment of the Charmen, the they done in a Exercitive Vice President, Senior Vice President, and Asserted Vice President, and Asserted Vice President, a vice President, and deviate with the Charmen, the they are the they are the president of the President, as the Senior Vice President, a vice President vice and deviated with the Company's sent by a Senior vice President, and they are the senior of senior vice president vice of each of the programment and the condition of senior vice president vice

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COMPANY, at the City of

this day of

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approve of the within bond as to its form fliciency of the Surety.

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MECHANIC'S

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BOND

E JETNA GASUALTY AND SURETY COMMITTED COMMITTED



ATTORNEY - IN - FACT JUSTIFICATION

PRINCIPAL'S ACENOWLEDGMENT - IF A CORPORATION

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, before me personally appeared

to me known, who, being by me duty sworn, deposes and says: That he resides in the City of

the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate scal; that it was so affixed by order of the Board of Directors of said corporation, and triat he signed his name thereto by like order.

PRINCIPAL'S ACKNOWLEDGMENT - IF INDIVIDUAL OR FIRM

State of New York, County of

day of

, before me personally appeared

I described in and who ex-

to me known to be (the individual) (one of the firm of

erons the within instrument, and he thereupon duly acknowledged to me that he executed the same (as the act and deed of said firm).

30th devot

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POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS. THAT THE RINA CACUALTY AND SURETY COMPANY, a corporation duty organized under the take of the State of Connecticut, and having its principal office in the City of Harriord County of Harriord, State of Connecticut, hate made, constituted and appoint and does by these presents make, constitute and appoint R. B. Longhita, W. A. Michaner, D. J. Röblinson, M. B. Boorman on R. E. Pool --

. n. D. 1902	
Rochester, New York	true and lawful Attorneys in Fact, with full power and unthority heraby conferred to sign,
secure and acknowledge, at any place within the United	States or if the following line be filled in, within the area there designated
, the follows	rg instrument(s)
by his sole signature and act, any and all bonds, recognizances, contri	acts of indemnity, and eliner writings obligatory in the nature of a build, recognizance, or con-
duronal undertaking, and any and all consents incident thereto	
IN THE REINA CASUALTY AND SURETY COMPANY, there	by as fully and to the same extent as if the same were signed by the duly authorized officers
IT THE KINA CASUALTY AND SCREET COMPANY, and of the set	s of said Artomays in Foct, pursuant to the authority herein given, are hereby ratified and con-
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September 1974

Descen Coustr. Co., Inc.

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ORDER AND JUDGMENT

Robert J. Sherer 1 Center Plaza Boston, Mass. 02103

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un elterly residencial unoject in Mocnestar. New York, trace, a sw York composition conserved into a concentract with Beacon to install the electrical work. The subcontract conceined a written seiver of Matco's right to file a notice of mechanics lien under the New York Lien Law.

Beacon, a desagonesica comportation, was the

The complaint herein, based upon alleged diversity of citizenship, was filed September 11, 1974. The action was brought pursuant to 28 U.S.C. Section 1332 in which the plaintiff sought a judgment under 23 U.S.C. Section 2201, declaring null and void a notice of lien as in violation of the contract between the parties, seeking specific performance of an agreement waiving the defendant's right to file a notice of lien, and other relief.

On ordered 23, 1974 the defendant filled a codice of crion recommends on powerful 1974 to dismiss the constitution of the defendant to the constitution of the code of the cod

Page 1979 STELLOS. For the purcose of dissolving the

"J. The cost to the plaintles of obtaining said food was \$3,515.50 in premiums paid to the Astra Casualty and Straty Company, surety on said bond."

It further struck out paragraph 2 of the demand for judgment and substituted the following:

- "(2) Declaring that the bond filed by the plaintiff as principal and the Aetna Casualty and Surety Company as surety on October 3, 1974, is void.
- "(3) Awarding plaintiff the cost of the aforesaid bond premium in the sum of \$3,516.00 and its costs herein."

On the same day, October 29, 1974, plaintiff filed with supporting papers a motion for summary judgment:

(1) Declaring that the notice of mechanics lien dated August 28, 1974 filed by the defendant in the Monroe County Cleri's Office against the property of Clinton Avenue Paul Place Counted Tag., 356 Clinton Avenue Paul Place Counted Tag., 356 Clinton Avenue South, Departure, New Cook, 202 Appendix. (2) Southering that the bond given

defending the sea or 93,515.00 paid by the plaintiff as a previous for the bond.

the amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs. This court has jurisdiction to determine the controversy.

The owner of the property is not a necessary or indispensable party.

The complaint and amended complaint state a claim for which this court is empowered to grant relief.

There is no genuine issue as to any material fact.

The plaintiff is entitled to judgment as a matter of law.

Accordingly, it is hereby

CRDERED and ADJUDGED that the defendant breached its contract with the plaintiff, when, on August 29, 1974 it caused to be filed a notice of lien in the Monroe County Clark's Office. The notice of lien is null and void. The filing by the defendant of the notice of lien made it necessary for plaintiff to incur expense of \$3,515.00 as a premium for a Lond to discharge the lien. The bond given by the plaintiff on Courses, 1979 as principal and the Aetha Charalty and Surery Company as surety, to dissolve the lien.

January 2, 1975 to offerd the defendant of the land including

MAROLD P. BURKE United States District Judge

December /2, 1974.

JUDGMENT

This action came on for MEEK (hearing) before the Court, Honorable Harold P. Burke, United States District Judge, presiding, and the issues having been duly town (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff, Beacon Construction Company, Inc., shall recover against defendant, Matco Electric Company, Inc. d/b/a Dwyer Electric Co., \$3,516.00, the premium incurred for the bond. Execution of this judgment is hereby stayed until and including January 2, 1975, to afford the defendant an opportunity to file a notice of appeal.

of December 1974

JOHN K. ADAMS Clerk of Court

Plaintiff roves, pursuant to Rule 60 (a) F. P. C. P. that the form of the judgment entered in this action by the clerk on December 16, 1974, be corrected to the form appended hereto so as to conform to the order of the Court entered on Decathur 12. 1974.

D" its attornay,

Rocke Carens & DeGiacomo

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modera di durare Macha Girana & Sullacoro

One Contac Plaza 200 7h, 15 02103 Tel. (617) 742-5161

Attorney for Plainties

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISCRICT OF NEW YORK

BEACON CONSTRUCTION COMPANY INC.,]

7.

NATCO ELECTRIC COMPANY, INC., d/c/a serea leactric co., inc.

CIVIL ACTION NO. 74-428

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Court, Schoragle Rarole to derive the track to act to act

rus, ricce Louiss, Inc. is null and void.

we still drained and the Dalbe Consulty and Coraty decision

3. That the plaintiff heads Comparison to make the fundament

Natco Electric Company, Drc. 6/b/a Dayer Plectric Co., Inc. \$3516.00, the previum incurred for the bond.

Dated at Duffalo, New York, this 16th day of December 1974.

Cloric of Court

The parties to the above-captioned action, by their attorneys, stipulate as follows:

1. The Plaintie Trotion under Rule 60(a) F. 2.0.8, to correct the form of judgment entered by the clark or December 16, 1974, BC as to conform

said motion shall be entere nume pro tene as of

3. Such as recreated address that or treated acceptable from which the defendant's appeal was taken on December 30, 1974.

4. This stipulation, the plaintiff's motion to correct judgment, and the corrected judgment, shall be transmitted by the Clerk of this Court to the Court of Appeals as a supplemental record on appeal.

Robert J./Sherer Roche Carens & DeGiacomo

One Conter Plaza Boston; MA 02108

Tel.(617) 742-6161 Attorney for Plaintiff

Rodney A. Michards

Becker Card Levy & Richards

141 Washington Avenue Endicott N.Y. 13760 Tel.(607) 754-0106

Attorney for Defendant

The foregoing stipulation is approved and it is : Lagoran os

This action came on for MXXX (hearing) before the Court, Honorable HAROLD P. BURKE,

, United States District Judge, presiding, and the issues having been duly XXXX
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged

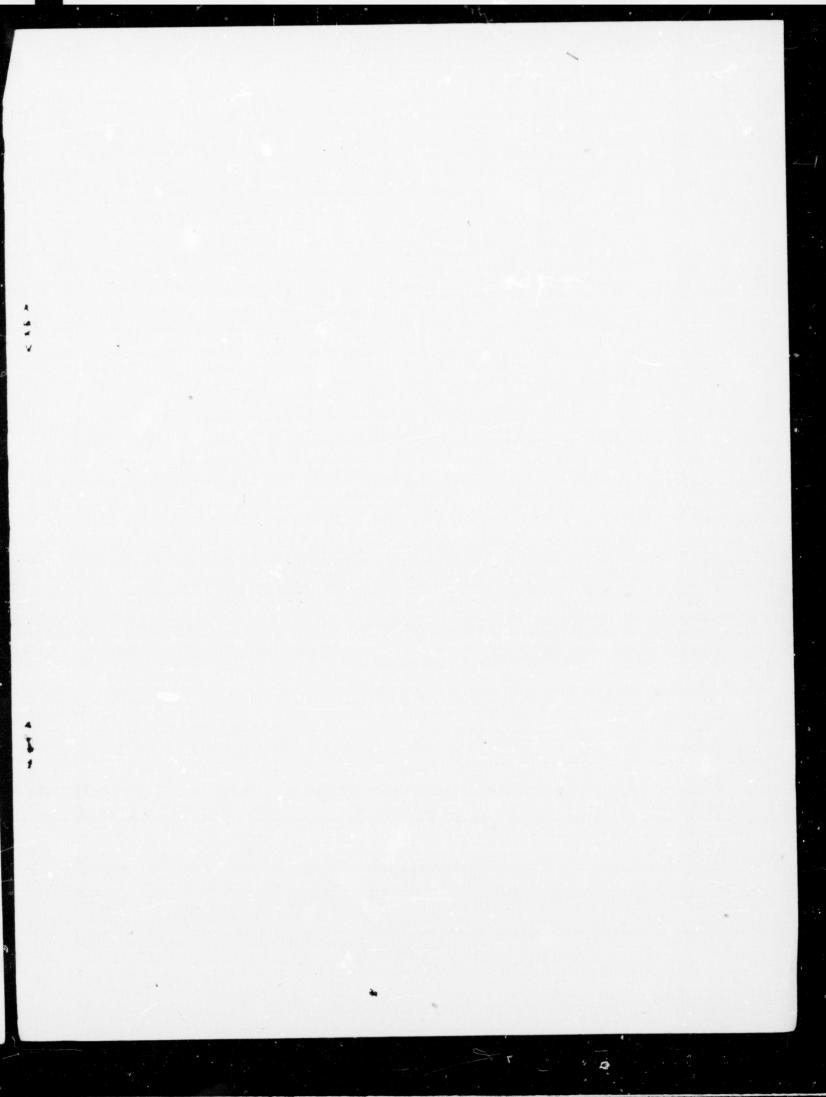
- 1. That the notice of lien filed by the defendant on August 29, 1974, in the Monroe County Clerk's office against the property of Clinton Avenue Paul Place Houses, Inc. is null and void.
- 2. That the bond given by the plaintiff as principal and the Aetna Casualty and Surety Company as surety to dissolve the said lien is void.
- 3. That the plaintiff Beacon Construction Company, Inc. shall dedover against the defendant Matco Electric Company, Inc. d/b/a incertac Co., Icc., 38,318.00, the premium incurred for the bord.

ed at Buildilo, New York

, fais 16th

December , 1974.

JOHN F, ADAMS Clerk of Court



SUB-CONTRACT No: 8148-010 This Agreement, must this twentieth day of September . 13 72, b, and butter MATCO ELECTRIC COMPANY INC., P. O. Box 227, Johnson City, New York - d/b/a DWYER ELECTRIC CO. INC., 252 Tremont Street, Rochester, New York 14603 hereinster cilled the "Subcontricter", and BEACON CONSTRUCTION COMPANY INC., 015 Clinton Avenue, South - P. O. Box 1544, Exchaster, New York 14504, Exchaster called the "Contractor". Whereas, the Contractor has undertaken the construction of the Paul Place Housing for the Elderly Residential Project — Elderly Site 6 —
Pinabote View Apartments, hereinaster called the "Project", in Rochester, here York, in accordance with the provisions of a equitorities contract
between the Contractor and Clinton Ave. Paul Place Houses, Inc., haveinafter called the "Cliner", a comparation organized and existing under
the Private Housing Finance tow of the State of New York and a subsidiary of the New York State Brian Cereingment Comparation, bereinsteen NOW, THEREFORE, in consideration of the agreements herein contained, the parties herete mutually agree as follows: Section 1. The Subcontractor ogrees to sell to the Contractor all of the insterials and equipment and to perform and complete for the Contractor all of the labor, work and all else required, to perform and complete the following required by the contractor contract between the Contractor and the Owner, hereinalter collect the "General Contract". Furnish and install all labor, material and equipment to provide complete INTERIOR ELECTRICAL AND EXTERIOR ELECTRICAL SYSTEMS, including: ENCLOSURE A ENCLOSURE D ENCLOSURE C ENGLOSURE D ENCLOSURE E All of the materials and equipment to be furnished and tabor, work, and other services to be performed and completed by the Subcontractor pursuant to this Subcontract are herein collectively referred to as the "Work". All of the foregoing is to be furnished and performed in accordance with the General Contract and the contract documents referred to therein, including the drawings, plans, and specifications which are contract documents under the provisions of the aforementioned Construction Contract, UDC Project No. 99, and Addendum #1 (8/9/72) and Addendum #2 (8/28/72) on file at UDC, prepared by Pobarman & Wasserman, hardinafter called the "Architect", as the same may be revised with UDC approval from time to line, the UDC document dated May 1971 entitled "Ceneral Conditions of Contracts for the Construction of Residential Projects", heremaker called the "General Conditions", the Land Oisposition Agreement between the City of Rochester and UDC governing the project, the UDC Affirmative Action Policies and Program dated June 1971 and the UDC Affirmative Action Policies and Program dated June 1971 and the UDC Affirmative Action Policies and Program refung to Construction of UDC Projects Outside New York City dated June 1971, all of which, logariar with the Contract Contract of this Supposition that is not the Contract Occuments". Except as modified herein the Contract Occuments form a part of this Suppositions as fully as if set form herein at least of the Contract Decomposition of the Contract Occuments form a part of this Suppositions and further agrees to examine to this Contract of the Contract Occuments and further agrees to examine to this Contract of the Contract Occuments and further agrees to examine to this Contract of the Contract Occuments and further agrees to examine to this Contract of the Contract Occuments and further agrees to examine to this Contract of the Contract Occuments and further agrees the examine to the Contract Occuments and further agrees to be bound to the Contract Occuments from a Contract Occuments and further agrees to be contracted to the Contract Occuments and further agrees to be a contracted to the Contract Occuments form a part of the Contract Occuments and further agrees to the contract Occuments of the Contract Occuments and further agrees to the Contract Occuments of th tractor agrees to be bound to the Guntrictor respect to the Work, all obligations and respe respect to the Work, all obligations and responsibilities which the Contractor has, as general contractor, assumed to the Owner and USC.

Soction Z. Title to all materials and equipment to be sold by the Subcontractor to the Contractor pursuant to the provisions of this Subcontract shall remediately vest in the Contractor upon delivery of some materials and equipment to the Site or, it strend offsite with the approval of the Contractor and UBC, to the approval change breathing, before their installation or incorporation into the Project. Such materials and equipment shall be become the sole properly of the Contractor subject to the report of the Contractor, the duner and the Architect to report the same within a responsible except for induced to contract a subject to the report of the Contractor, the duner and the Architect to report to the same within a responsible except for the respect to the of offsite foreign or appropriate delivered to the or subject to the or subject to the order of the contractor of prior to their incorporation in the Project. The Subcontractor, until incorporation of such materials or equipment for the responsible for obtaining any materials or equipment required to replace materials are equipment for the region of the Contractor. to be done from the day the Sallementar the same STA-ROMDINED, LORIY-EKGRI THOUSEND --ment made, our epotoval of a pursuant of the Work gives for purcoses of making a givind payment, shall constitute an acceptance of any Work by the Contractor which is not in accordance with the Contractor than Submartial.

3.3 The Subcontractor ware acts and guarantees that title to all work, marginals and equipment on and by a Parciation will be in the Contractor, our of the training of the contractor of the training of the contractor of the training of the contractor. on interest to the first and the second many, and explored by the Contracts, the Architect and God with respect to some Requisitions contracts a displaying the Subcontracts because payment is made. The value of any instants, equipment and Viork included in each of which round be signed by the Subcontracts because payment is made. The value of any instants, equipment and Viork included in each of which rounds was higher that or a payment to contract a first payment to the footback of the contract of the co Bagaration is swithstartung any other obstacle in this Science to the contractor swithout the obligated to read payment to the Subcontrol arion any approved Requisition prior to the Contractor's race of or payment than the Owner to respect of such Requisition, and the Contractor shall only be obligated to make payment of any approved Requisition to the extent of payment received by the Contractor from the 35. Final Payment shall be made by the Contractor to the Suddelivers crountly upon receipt by the Contractor of find payment from the Owner in approximate with the terms of the General Contract and the Contract Bodoments.

Section 4. The Subcontractor agrees to peture the Work diagently in accordance with the directions of the Contractor, and in compliance with the pin schedules of the Contractor, it is specifically understood that the time for performance is of the Contractor, and in compliance with the pin schedules of the Contractor, it is specifically understood that the time for performance is of the Subcontractor agrees to perform all Work on the Project with labor which will work harmonicusty with other elements of labor made and the construction of the Project. in the construction of the Project.

The Subcontractor agrees to furnish ail shop drawings, samples, certificates and signifer information, as required, which will only of the Contractor, the Architect, the Government LDC.

The Subcontractor agrees that it shall be also claim for many damages or additional compeniation for daily, no matter how of any daily or increase in the time required for performance of the Subcontract of the time set tools as Section 2s of the summing part of the Contract Documents, the Subcontractor shall be entitled only to such extension of time for performance of the allowed to the Contractor by the Contractor shall be entitled only to such extension of the formal of the subcontractor by the Contractor by the Contractor by the Contractor of the formal Contractor of the formal contractor of the formal contractor of the Co is understood that this Subcontrast, including the terms and conditions on the succeeding pairs and aft in to ments income out to be a succeeding pairs and aft in to ments income out to be a succeeding pairs. This Subcontrast could be builded in a and shall and the of New York. be governed by the la-Matco rie Dwyer . horro has created this agreement on the date first written state.

DEACON CONSTRUCTION

BEACON CONSTRUCTION BEACON CONSTRUCTION COMPANY INC.

LOUISE M. HOROWITZ

very, late, nutrients, provide that it would do, perform, childs, furnish and provide, at its convergence, all very, late, nutrients, provide, their and entering, provide, their and entering of the Architect, destructor, dones and the, and in races competition to design or otherwise and other absolutes are not to design or otherwise interfere with or contract their design of the Architect, destructor and the Architect, destructor and the Architect, destructor and provide and the Architect, destructor and the Architecture with or contract their destructor and other and other and the the design of the Architecture of the mollars (\$ 648.000.00), with corpor EIGHT THOUSAND collers (5 on the environment of the by reason of cathorizant unless size work is come in pursuance more provided in the Coneral Laurent for like of all pairs claims shall be given to the Coneral action after communication of such additional work to the claim or shall be considered as abandance or shall be considered as abandance or large or which remembers the directors of the large or large or which remembers the directors of the large of the large of the directors of the Contractor.
7. Is is further eyes the Color of the state of the Art shall be well as the training the state of the training the state of the st In our factors to the Subsection of the Contractor of the Contract Fore to the respective trainer, he bound by the first return and further with reference to the assignment of port to the respective trainer, he bound by the first return and further and further and the further of the further based for settle and of distinctions of the further by the settle and the settle statements.

16. Chealt the Substituter be a series a before, or take an assistant for the benefit of cheditors, or suffer the appointment of a receive to arminisher its altura, or conditions at the further benefit of cheditors will have the result provided and or one of a series to arminisher its altura, or conditions return to supply a sufficient number of the big of the form of the series of a series of a fallow as a solice ty all majory programs as undepthe Contractor. The Substitution series to know to know the service of the ser 17.1 No chain for services rendered or meternal surnished by the

The Contractor areas to all a to Educate types to destroy of the Contractor types and the contractor of the contractor o in UN'S Accounted to the contract of the contract of the projects in the area in which has broad is leasted. The Schemersche hall, in this project, to the constraint of the project is the area in which has broad is leasted. The Schemersche hall, in this project, to the contract of the constraint as the majorated and the forest of the constraint of the that now allows towns to the second s 1141

control of the School to have its representa-cents of the School tractor relaxing to the Work opts from such books and records. There atti-uat be establed to receive a our greater than also for the School tractor's overness and at York, UCC and the Contractor shall have the actount and records of the Subscontractor re-a is compliance with the requirements of law and related contracts providing assistance for is save harmless the Contractor, the Owner, UDC and the State of New ers and (with respect to the Owner and SUB) directors (hereinafter inst any and mil limbility, loss, damages, interest, sidments and russ (including, but not limited to, counted feet and disbursements) and all claims decands, suits, actions or proceedings which may so or in relation to any injuries, including death at any time remail, or on account of any damage to property, arising out of or in whicher or not such injuries to persons or damage to property are inscontractor or its employees or agents, the Indemnites or any be policy of convents size general public liability insurance promity solurement which insures Subjective to liability under the or shall indennify ar bits, officers, employ inters") from and aga id all coats and execu-connection with, say of the Indennities I, y any person or person of this Subsonerson, y mentioners of the E or shall provide in a The second of the second of the second street are suggested; the provincing of the New York State of the second and the second IRHE on this 28th asymptotic periods and the second to such a period of the second period p of said composition; and they be a provided associated by like order.

Story 2 and, Since of New York

No. 7033215 Noncry Police, Since of New York
No. 7018215
Pesiding to Ensone County
Fy commission outpies March 20, 19.7 day of . 1972, toform my commandity co. transfer, and, thing by tradity mess, did depose our cays. That he consider at ; that he is the of Beard Construction Cours y Lac., the corporation described to cost which executed two foregoing some cost, that he boses the meal of most comparation; that the meal affilted to cost instrument is once emporate deal; that it was so affilted by order of the Beard of Directors of maid corporation; and that he stored bis made thereto by like order.

RIDER

ANNEXED TO AND	MADE PART OF SUBCONTRACT DATED September 20,
19	72, BETWEEN Matco Electric Company Inc d/b/a Dwyer
Electric Co. Inc. an	nd Beacon Construction Company Inc.
WITH REFERENCE	E TO CERTAIN WORK IN CONNECTION WITH THE CON-
	NNACLE VIEW APARTMENTS, ROCHESTER, NEW YORK.
	id agreed that the Subcontract price provided for in
	orementioned Subcontract is the total of (i) THEET THE TOTAL WINGER
	(\$ 342 cms) in payment for the materials to
	(5) / in payment for the work and
	and and a reputation of the selection to be and for the Sab-
	RHK

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. 8/5/a DWYER ELECTRIC CO. INC. and BEACON COMSTRUCTION COMPANY INC.

THE FOLLOWING WORK IS ALSO INCLUDED:

- 1. Specification Sections as follows:
 - a. SPECIAL CONDITIONS MECHANICAL & ELECTRICAL TRADES DIVISIONS 15 AND 16, complete.
 - b. Division 16 DI SUTRICAL, complete.
- 2. Furnishing Perform and Payment Bonds.
- 3. Perform own engineering and layout work.
- Provide temporary to the service as directed by the General
 - grange the Javan's poring and

 - items.
- 7. The hastaltation of all electric fixtures shown on plans no matter
- The installation of a complete electric heating system as shown on the plant so mailter by who furnished.
- All excevation and beckfill in connection with the work under this Subcontract.
- 10. Rochester Gas and Electric Company charges will be paid by others.

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEAGON CONSTRUCTION COMPANY INC.

- 11. Sales and compensating use taxes of the State of New York and of cities and counties of the State are exempt from this contract on all supplies and materials incorporated into the completed project.
- 12. Clean up as and when directed and remove own rubbish.

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

As part of the tot price of this Subcontract, this Subcontractor has included the allowance amount and sum of Forty-Eight Thousand Dollars (\$48,000.00) for the furnishing only of the interior electric light fixtures and lamps.

The General Contractor or his designee shall have the right to enter into contracts with others for the furnishing only of the aforementioned interior the light for his assign and a shall have the right to assign such a sort light for the space and the first fixtures are furnished by others, the fixtures all be furnished electric light fixtures are furnished by others, the fixtures all be furnished in a larger particular to a receive where they will be also as a standard to the project when required. If the contracts for the afore made as a fixture as a greater (or tess) than the

ENGLOSURE C

Attachment to Subcontract dated September 20, 1972, between MATGO ELECTRIC COMPANY ING. d/b/a DWYER ELECTRIC CO. ING. and BEACON CONSTRUCTION COMPANY ING.

As part of the total price of this Subcontract, this Subcontractor has included the allowance amount and sum of Thirty-Six Thousand Dollars (\$36,000.00) for the furnishing only of the electric baseboard heaters and thermostats.

The General Contractor or his designed shall have the right to enter into contracts with others for the furnishing only of the aforementioned electric asseboard heaters and a serious to a saign such electric heating materials contracts to this Subsentimeter. In the event the aforementioned electric baseboard heaters and thermostats are included by where, the materials will be familiated for be Subsentimeter's attained by where, the materials will be familiated for and become the majoration of the Gubcontractor, to be stored and then a surfied on the project of the received of the contractor of the surfied on the project of the received of the surfied on the project of the received of the surfied on the project of the received of the surfied on the project of the surfied of the surfied on the project of the received of the surfied on the project of the surfied of t

been previously approved in writing by the General Contractor.

ENGLOSURE D

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

It is contemplated that the Contractor or a related entity will construct an additional project of approximately 264 dwelling units in Roches ar, New York in the vicinity of Pinnacle View Apartments Site 6. Should this be done, then the Contractor or a related entity shall have the option of extending this Subcontract for the additional project by written notification to this Subcontractor. The price of this additional work is to be based upon the price of the work under this Subcontract promited.

ENGLOSURE E

Attachment to Subcontract dated September 20, 1972, between MATCO ELECTRIC COMPANY INC. d/b/a DWYER ELECTRIC CO. INC. and BEACON CONSTRUCTION COMPANY INC.

The Contractor will provide to the Subcontractor material elevator hoisting service. The Subcontractor will promptly load and unload on the hoisting device all materials to be hoisted by the General Contractor. The General Contractor will perform hoisting for the Subcontractor on schedules established by the General Contractor. All hoisting will be performed during normal working hours. The care, custody, and ownership of all the Subcontractor's material being hoisted remains the responsibility of the Subcontractor. As compensation for this hoisting service, the Subcontractor will pay to the General Contractor the sum of Twenty-Thousand Dollars (\$20,000). This sum will be paid to the General Contractor when the Subcontractor's work is fifty percent (\$0%) complete as measured by the value of the Subcontractor's requisition.

BECKER, CARD, LEVY & RICHARDS, P. C.

JACUB Y. BECKER (929-973)
MAHEON H. CARD
BRUCE O. BECKER
PHILIP D. LEVY
RODNEY A. RICHARDS
DONALD P. CARLIN

141 WASHINGTON AVENUE ENDICOTT, NEW YORK 13760

> TELEPHONE (607) 754-0106 AREA CODE 607

August 28, 1974

Beacon Construction Company, Inc. P. O. Box 2051 Montello Station Brockton, Mass. 02403

Re: Notice of Lien - Public Improvement
Housing for the Elderly
U. D. C. Site #6
846 Clinton Avenue, South
Rochester, New York

Contlemen:

Enclosed herewith please find a copy of a notice of tion recently served upon the Comptrolle: Nov York

Conding A Pichards

NOTICE OF LIEN ON ACCOUNT OF PUBLIC IMPROVEMENT

BECKER, CARD, LEVY & RICHARDS, P. C.
ATTORNEYS AT LAW
141 WASHINSTON AVENUE
ENDICOTT, NEW YORK 13760

TELEPHONE (607) 754-0106

NOTICE OF LIEN ON ACCOUNT OF PUBLIC IMPROVEMENT

TO: COMPTROLLER, NEW YORK STATE URBAN DEVELOPMENT
CORPORATION, 1345 AVENUE OF THE AMERICAS, NEW YORK
N. Y., 10019, AND TREASURER, CLINTON AVENUE PAUL PLACE
HOUSES, INC., 919 CLINTON AVENUE, SOUTH, ROCHESTER,
NEW YORK, 14620, AND PRESIDENT, BEACC! CONSTRUCTION
COMPANY, INC., P. O. BOX 2051, MONTELLO STATION,
BROCKTON, MASS, 02405

NOTICE IS GIVEN that MATCO ELECTRIC COMPANY, INC., apply a Dwyse Picciric Las, fire, whose part of lice allowed in the Company, Policy that, has visit, has visit allowed upon the manays of the Rescan Construction Colpany, 1964, P. O.

of New York and a cabaldher; of the New York Scale Urban Develop-Composition of the confidence thereof, and which are applicable to the construction of the public is provenent, described below, to the extent of the amount due and to become due on a contract dated September 20, 1972, made by the Beacon Construction Company, Inc., and Matro Electric Company. Inc., d/h/a Dwyer Electric Co., Inc., for the construction of a public improvement. The lien is based upon the following facts:

- 1. The name of the contractor for whom the labor and materials were performed and furnished is Beacon Construction Company, Inc., P. O. Box 2051, Montello Station, Brockton, Mass., 02403.
- 2. The amount earned and due is in excess of Two Ladred Minety Three Two sand and the Pollar and 52/100 (2293,001.52).
 - 3. The same professed and naterials furnished
 - to / to the first to the first
 - (1.1 %) a dela la marcata de la caracte la Above appointe

- 9 5. The labor and noterials for the profounder
- into to Type and an establish 370 of the claim.
- for staind labor and returnials were performed in furnished purguent to the aborevaid contract whereby the lichor agreed to psovide all the labor, material and equipment

for the interior and exterior electrical systems in an apartment building being constructed at 846 CLINTON AVENUE, SOUTH, ROCHESTER, NEW YORK, pursuant to the plans and specifications of Hoberman & Wasserman, Architects, 19 West 44th Street, New York, New York, 10036.

7. Thirty (30) days have not elapsed since the completion and acceptance of the construction of this public improvement.

1: 225 24, 24,

MACCO ELECTRIC COMPANY, INC. Englishment Company, Eng. STATE OF NEW YORK)
:SS.
COUNTY OF BROOME)

JAMES F. MATTHEWS, being duly sworn, deposes and says that deponent is the President of Matco Electric Company, Inc. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and ballef, and where he is the point of the ballef, and

The reason why this verification is made by deponent to that directly the end of this to the translature of this continue.

of deputant's belief as to all natters not therein stated upon the stated upon

/s/ James F. Maithews JAMES F. MALTHEWS

Sworn to before me this
28th day of August, 1974.

/s/ Rodney A. Richards
Notary Public
/s/ Notary Stamp

BECKER, CARD, LEVY & RIC-ARE TO ATTORNEYS AT LAW INT WASHINGTON AVENUE ENDICOTT, NEW YORK 373

D.

nuction Company, Inc.

tion cs. 02403

RECE

BECKER, CARD, LEVY & RICHARDS, P. C.

JACOB Y. BECKER (1929-1973)
MAHEON H. CARD
BRUCE Ó. BECKER
PHILIP D. LEVY
RODNEY A. RICHARDS
DONALD P. CARLIN

141 WASHINGTON AVENUE ENDICOTT, NEW YORK 13760 TELEPHONE (807) 754-0105

AREA CODE 607

August 29, 1974

President
Beacon Construction Company, Inc.
P. O. Box 2051
Montello Station
Brockton, Mass. 02405

Re: Notice of Mechanic's Lien
Housing for the Elderly
U. D. C. Site #6
846 Clinton Avenue, South
Rochester, New York

Dear Sir:

Enclosed herewith please find a copy of a notice of a mechanic's lien forwarded to the Monroe County Clerk's Office for entry concerning the above-entitled matter.

Very truly yours,

Rodney A. Richards

blc

Inclosure

2012/125 COURS Traines, with the contraction and the contraction a
xpmsequed/b/a Dayer Pleatric Co., Inc.
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MANUEL
xteirs/cre-parameter/Collegementarys/Highertary
whose business address is at 56 Commerce Drive
of L., of Donnostor, Lew 10 1.
in the Catty of Rochester, her
have and claim a line for the principal and interest of the price and value of the labor and material hereinafter mentioned, upon the house, building and appartenences, and upon the lot, premises and parcel of land upon which the same may stand, or be intended to stand, hereinafter mentioned, pursuant to the Lieu Law of the State of New York and all acts amending or extending the same or providing for the filing of mechanic's Hens; or in force in said
(1a.) The name and address of Henor's attorney, if any Becker, Card, Lavy & Richards, P.C. 141 Washington Avanue, Endicobt, New York
(2.) The name of the owner of the real property against whose interest therein a liea is claimed is Clinton Avenue Paul Place Houses, Inc., 919 Clinton Avenue, South, Rochaster, New York, 14620 and the interest of the owner as far as known to the liener is held a varianty deed.
(3) The name of the person by whom the Beacon Construction Company, Inc., P.O. Box 2051, Montello Station, Brockton, Mass, 02403
The main of the passon to whom the lieups - formitted extings that the court in the late whom the
Here I dometer to de conquesta de seviente Descon Construction Company, Tro.
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MONTH REPORTED BY THE REAL TRANSPORTED CONTINUES IN TRANSPORT IN THE REAL PROPERTY.
You have a price and value \$ 876,076.
The program could be the form to the form that the state of the state of the 103,410.56
The amount capable to the house for the nontenal according name and for but not de-
Hydred to the real property is Total amount unpaid \$293,001
The total amount claimed for which this lim is the is 293,601.52
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The time when the fact item is sometimes from a South Control 20
1 August 22 19 1
10 March 1 Annual Control of the Standard March 19 March
I was the property of a to the F or almost to the City of Rochester, County
of Montes (449 Commander, Factor)

171111 furnishing of the materials for which this lien is claimed. MATCO ELECTRICES COMPANY, SHEET. d/b/a DWYER ELECTRIC CO., INC. 1974 By: /s/ James F. Matthews 28 August State of New York, County of being duly sworm, says that deponent is (one of the co-partnership named in the within notice of Ren) and the claimant mentioned in the foregoing notice of Hen; that deponent has read the said notice and knows the contents thereof, and that the same is true to deponent's own Inowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be trus-Swore to before me this day of _____ State of New York, County of Broome JAMES F. MATTHEWS The reason why this very memoric made by deponent is the deponent is an officer, to wit, the Pre-sident Matter Electric Company, Inc. /s/ James F. Netthree Sword to before rue this. TIMES P. WEST der of August FIGURE 6 - A OTICE OF LISTS.—Note of the proof of the coldinar Control of the section of the control of the cold o South Construction TOT 293,001

EKER, CARD, LEVY & RICHARDS F.
ATTORNEYS AT LAW
141 WASHINGTON AVENUE
ENDICOTT, NEW YORK 13760

N 10 10 1 20 1

SPECIAL. DELIVERY

onstruction Company, Inc. k 2051 Station Mass. 02405

ELIQUESTED

REGISTILLE 12. 7 c s The defendant moves this Court upon the grounds that more particularly appear in the affidavit of RODNEY A. RICHARDS, sworn to on the 22nd day of Osbober, 1974, anaexed hereto, as follows:

to My didnish the completed because it fails to state the interest upon which relief can be granted,

1.11

that the alleged claim does not arise under the Constitution, laws, so wearing to the United States as is alleged the said

AND

3. To dismiss that part of the complaint seeking judgment to vacate defendant's request for a verified statement pursuant to paragraph 5 of Section 76 of the Lien Law, State of New York, on the grounds that this right cannot be waived and any effort to enforce a waiver is contrary to public policy.

AND

iprisdic too because this action on the ground that the Court prisdic too because the controversy is not between citizens if forest states in the Court of AVE. PAUL PRICE FOREST. THE ...

indioposable as to produce the second second in the second

OR. IN THE ALTERNATIVE

paragont to Rule 25 of this Court on the ground that the plaintiff has its principal place of business without the district.

BECKER, CARD, LEVY & RICHARDS, P. C. Attorneys for Defendment Office and Post Office Address 141 Washington / enue Endicott, New Yo 13760 TEL: (607) 754-01

NOTICE OF MOTION

TO: HOWARD MEYER Attorney at Law 1400 Statler Hilton Hotel Buffalo, New York

PLEASE TAKE MOTICE that the undersigned will bring above motion on for a hearing before this Court at the dailed States Courthouse, Buffalo, New York, on the 11th day of Movember, 1972 at 10:00 o'clock in the foremoon of that day

-9-

Affidavit

STATE OF NEW YORK) :SS. COUNTY OF EXOCME)

ROTHER A. BECFREES, being duly buons, deposes and sava:

1. Deponent is associated with the lew from of RECKET.

ing the above-entitled action.

controot wire the prejector, a gaze at good rector, to provide,

furnish and install all the labor, material and equipment for the interior electrical system of an apartment building located at 846 Clinton Ave., South, City of Rochester, County of Monroe, State of New York. The contract, a copy of which is annexed to the complaint as Exhibit "A", recites that the owner of said premises is the Clinton Ave. Paul Place Houses, Inc., a corporation organized and existing under the Private Housing Finance Naw, State of New York, a subsidiary of the New York State Urban Development Corporation.

3. On or about the 29th day of August, 1974, the plaintiff ones to the characters a cus of rency in excess of two and minesty-tures for sans pollurs (\$293,000.00) con labor and the late of the characters of the characters of the characters of the characters.

for a verified scatement pursuant to the Time Town ether of provenue appears which accounts as as province province as addition of the companies.

4. Thereefter, on or about October 1, 1974, an aution the started by the defendant against the plaintiff in the Suprem. Court, State of New York, to impress a lien pursuant to Article

3A, Lien Law, State of New York. A copy of the summons and complaint is annexed to the Petition for Removal.

- 5. On October 3, 1974 there was served on deponent a bond issued by the Aetna Casualty & Surety Company discharging the liens in issue. A copy of this bond is annexed hereto as Exhibit "A".
- 6. The within action seeks to declare null and void the notice of mechanic's lien hereinbefore described. The complaint fails to identify by allegation the ownership of the property in question. This is a necessary allegation, the absence of which readers the complaint defective and subject to a motion to itsmiss
 - 7. Pereline.

- wasteness a dismissal of the action.

E. The within claim does not arigo until the

protested of the main bow, State of New York, a matter which the let be the to justicial determination by the Supreme Court, State of New York. Purther, the relief the complaint seaks is erroneous. Assuming the truth of the allegations in the complaint, the plaintiff is not entitled to a summary discharge of the lien.

Section 19 of the Lien Law, State of New York, sets forth the procedure to be followed in an application to discharge a lien for private improvement. Section 21 of the same law provides the procedure for the discharge of a public improvement lien. The within complaint does not comply in any way with the requirements of these provisions.

9. Plaintiff's demands for judgment seeking to vacate defendant's request for a verified statement pursuant to Section 7a, Lien Law, State of New York, as a matter of law, warrants limitsal. The right to such a statement cannot be waived; and

Departs respect the court to dismiss

Corner to the form and and

MACHER CONTROL

New Form Control

Quittet Control

Control

Control

KNOW ALL MEN BY THESE PRESENT OF WWW. BUAGON CONSTRUCTION CO., IRC., P.O. Box 2051, Fontallo Station, Brockton Wors. 02405

as Principal, and THE ÆTNA CASUALTY AD SURETY COMPANY, of Hartford, Connecticut with an office and usual place of business at No. 1200 Mible Comer Blig., Rochester, Hew York as Surety, are held and firmly bound unto the Clark of the County of Monroe

Three Hundred Fifty-one Thousand Sim Hundred One & 82/100 (s 351,601.82) Dollars, lawful money of the United States, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED and SEALED this 30th day of September , 19 74.

WHEREAS, on the 23thday of August .197h . MATCO REECERIC COMPANY, IRC. 2/b/a DAYTH FIRETRIC CO. THG., 56 Corneros Drive, Rochester, New York caused to be filed in the office of the Clerk of the County of Ronros One 252/100 a notice of Mechanic's Lien or Claim in the sum of Two Hundred Hinety-Varies Thousand One 252/100 (\$ 293,001.52) Dollars, against Real Property situate at 845 Chinton Avenue, South, Rochester, New York

WHERE IS, said BENCON CONSTRUCTION CO., THO. dischange sold lien or claim personn to the Lieu Law of the State of Man York, and

desire to

our name of the successors and essigns shall well and truly pay any judgment witch may be rendered against the property for transferous interesting recognistic to superficiency decided in Egy-cae Archeologic Site Frenched Once 17

THE ÆTNA CASUALTY AND SURETY COMPANY

Attorney-in-Fact

State of Markedhealts County of Suffalls.

On this 30th day of Steptenter . 1974, before me personally appeared Herry Steinking

EXHIBIT "A" - p.l

-14- George Timblate

On this day of

to me known, who, being by me duly sworn, did depose and say: That he resides in the City of ; that he is Attorney-in-Fact of THE ÆTNA CASUALTY AND SURETY COMPANY.

the corporation described in and which executed the within instrument; that he knows the corporate seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by him and that he signed said instrument as Attorney-in-Fact by authority of the Board of Directors of said Company; and affiant did further depose and say that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 882 of the Laws of the State of New York for the year 1939, constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law as amended, issued to THE ÆTNA CASUALTY AND SURETY COMPANY his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guaranties, and other obligations required or permitted by law; and that such certificate has not been revoked.

Notary Public

The within instrument has been executed by the above named officer by authority of the Board of Directors parsuant to the following Standing Resolutions of the aforesaid THE ÆTNA CASUALTY AND SURETY COMPANY, which Resolutions are now in full force and effect:

Votto Test each of the following officers: Chairman, Vice Chairman, Prevident, Any Executive Vice President, Any Service Vice President, Any Services, Any Assistant Vice President Any Services, Any Assistant Vice President Any Services, Any Assistant Services, and Agents to act for and on benefit of the Company and may give any such appoint search authority as his certificate of authority may previous to any mith the Company's name and seaf with the Company's seaf bonds, recognitives, contracts of indemnity, and other westings using activities and international condensations, and other westings using activities and revoke the sower and authority given him.

This boy bond, respectively, contract of indernally, or winting obligatory is the nature of a bond, recognization, or conditional undertaking shall be valid and up to a Company with made by the Company, the Vise Francis of the Company of the Vise President, and shall be valid and the Company of the Vise President of a United Standard, and of the Vise President of a United Standard, and duly standard or a Company of sent Vise President Standard, and duly standard or a Company of sent by a Sent by a Company of sent by a Company of the Company

EXHIBIT "A" - p.2

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Surety.

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ATTORNEY-IN-FACT JUSTIFICATION PRINCIPAL'S ACKNOWLEDGMENT-IF A CORPORATION

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State of New York, County of	i	D 34		
Do this day of		a ine personally appear at		
Do this to makeown, who, being by me duly swo	m, depases and says. That he res	ace a mithe City of		
totherathe		01	of corner aligns that	the seal affixed to said
tratheristhe the corporation described in and which restructent is such corporate seel) that	executed the within instrument: to	ear he knows the search so	nemerting and that I	resigned his name there-
instrument is such corporate seel; that	it was 5a attited by order or the	ogder or circular arms are		
to by like coles.				
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Same and at 2 33,230,655

in stone statement are deposited with public cofficiency, a a required by fair.



POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, THAT THE ATNA CASUALTY AND SURETY COMPANY, a corporation duty organizationd in the taws of the State of Connecticut, and having its principal other in the City of hariford, County of Hariford, State of Connecticut, halfilmed a constituted and appointed, and com by these presents make, constitute and appared R. B. Longhta, W. A. Nichener, D. J. Robinson, M. B. Boorman or R. E. Pool - -

, its true and Liwiuk Attorneys in Fact, with full power and outhority hereby conferred to sign, of Rochester, New York execute and acknowledge, at any place within the United States or if the following line be filled in, within the area there designated , the following instrument(s): by his sole signature and act, any and all books, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or occuditional undertaking, and one and all comments incident thereto.

and to bind THE REINA CASUALTY AND SURETY COAMANY, thereby as fully and to the same extent be if the same were suggest by the duty authorized officers of the ATNA CASUALTY AND SURETY COMMANY, and six the outs of said Attorney senifoct, pursuant to the authority herein gives, are hereby ratified and com-

This appointment is made under and by authority of the following Standing Resolutions of said Cor or ny which Resolutions are some in full force and effects

Willer. That each at the following officers, Chairman, Vice Chairman, Fresident, Any Executive Vice President, Any Sonior Vice President, Any Vice President, WOLLY. That each of the locked og others, Charman, Not Charman, President, any Security Vice President, Any Open Proceeding.

Any Assistant Vice President, Any Security, Any Assistant Secretary, may from time to time appoint Brendent Vice President Assistant Secretaries.

Attorneys enfoct, and Agents to act for and on behalf of the Company and may give any such appointer such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognitiones, contracts of indemnity, and other writings collegatory in the restored to sign with the Company's name and seal with the Company's seal bonds, recognitiones, contracts of indemnity, and other writings collegatory in the restored to sign with the Company's name and seal with the Company's seal bonds, recognitiones, contracts of indemnity, and other writings collegatory in the restored to sign with the Company's name and seal with the Company's seal bonds, recognitiones, contracts of indemnity, and other writings collegatory in the restored to sign with the Company's name and seal with the Company's seal bonds, recognitiones, contracts of indemnity, and other writings collegatory in the restored to sign with the Company's name and seal with the Company's seal bonds, recognitiones, contracts of indemnity, and other writings collegatory in the contracts. ravoke the power and autimoty given him

VOISB. That any bend, recognizance, contract of informaty, or virtual philips by in the disture of a bond, recognizance, or conditional undertaking should be saled and for the Company, when (a) agreed by the Convenients by Vice Chauman, the President and Executive Vice President of the Presiden want to the place presented in his or their certificate or certificates of outcomy

This Power of A former and Combests of Authority is somet and sested by financial and word by authority of the following Standing Resolution votes by the bind of Divisions of the John CASUACTY AND Social of Division is now as fill force and office.

VOISSE fair the signifier of each of the following offices. Chairmin, Viez Chairmin, Pary Cest, Any Executive View Freshors, Any Service View Provident, Any View resulters: Any Assertion View Provident, Any Search or Any, Admitted Chairmin, and the coast of my Chaptery may be Jureat by Istratule to an appeare of

Secretary

the attended when saving the conditions over the Control of the property of the control of the c THE ATLIA CADUALTY AND COME COORDING the execution described in ordinary in the production of the bodies the second compreation tout the seak of wed to the eard instrument is such original seak and that he deposited the seak instrument on heaviruit the property on the office under the Standing Resolutions then of

CERTIFICATE

I the undersigned. Againstant Secretary of the Africa Cashacty and Supervisor Contacts at Authority and Forest of Attorney and Contacts of Authority amounts in full trace and has not been record, and furthermore, that the Standard Resolutions of the found of Directors, as set firsh in the Contacts of Authority, are now in force I the undersigned, Assistant Secretary

Signed and Sealed at the feater Ordine of the Cooping in the City of Historic, State of Connecticut Dates this 30 bh September . 19 74

EXHIBIT "A" - p. 4 Thos. Facks son, Assistant Secretary Mentes a USA